

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

KOMBI ACHEN AND OTHERS (PLAINTIFFS Nos. 1 AND 2 AND
4 TO 16), APPELLANTS,

1897.
December 13.

v.

PANGI ACHEN AND ANOTHER (DEFENDANT AND PLAINTIFF No. 3),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 522—Decree in accordance
with an award—Appeal.*

A suit having been referred to an arbitrator, he made an award and a decree was passed, in accordance with it, in favour of the defendant. On an appeal by the plaintiff it appeared that the award was *prima facie* legal and proper :

Held, that no appeal lay against the decree.

APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in Original Suit No. 4 of 1893.

The plaintiffs and defendants were members of a Malabar edom, and the plaintiffs sued for a decree removing the defendant from management and for the appointment of fresh managers and to recover certain sums wrongly appropriated and retained by the defendant. The case was fully heard, but before judgment was delivered the parties agreed to submit the dispute to arbitration and an arbitrator was appointed. The arbitrator made his award which was in favour of the defendant. The plaintiff then applied, under Civil Procedure Code, section 521, to have the award set aside on the grounds of the arbitrator's partiality, of his refusal to examine fresh witnesses, and of his failure to give notice to the plaintiffs as to the time of hearing. A further ground, which was alleged, was that it was agreed that the arbitrator should endeavour to bring the parties into agreement but that, if he failed to do so, he should not pronounce an award against the consent of either party, but should leave the matter to be determined by the Court.

The Subordinate Judge refused to hear evidence as to the last matter which was inconsistent with the order of reference, and he

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determined the other points raised in favour of the defendants and he accordingly passed a decree confirming the award and dismissed the suit.

The plaintiffs preferred this appeal.

Sundara Ayyar for appellants.

Ryru Nambyar for respondent No. 1.

Bhaskara Menon for respondent No. 2.

JUDGMENT.—There is no doubt in this case as to the *factum* of the award and *primâ facie* the award is legal and proper.

The Court below holding that there was no cause shown for setting aside the award passed a decree in accordance with it.

Having regard to section 522 of the Civil Procedure Code, we are clearly of opinion that no appeal lies against such a decree. We are referred to no case decided in this Court in which the contrary has been held.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

NELLAIYAPPA PILLAI (PLAINTIFF), APPELLANT,

v.

THANGAMA NACHIYAR AND OTHERS (DEFENDANTS),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, ss. 30, 539—Public charity—
Suit by trustee.*

The trustee of a temple sued to recover from the representatives of the trustee of a fund constituted for special purposes in connection with the temple worship, a sum of money misappropriated by him and to obtain the appointment in his place of himself or some other fit person. The plaintiff obtained leave to sue under Civil Procedure Code, section 30, but no sanction had been obtained under section 539 :

Held, that the suit was maintainable.

APPEAL against the order of S. Gopala Chari, Subordinate Judge of Tinnevely, in Original Suit No. 33 of 1896, by which it was ordered that the plaint be returned to be presented in a proper Court.

* Appeal against Order No. 139 of 1897.